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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,667	07/20/2006	Anne Ortiz-Julien	BJS-1721-122	8048
23117 7590 07/19/2011 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
BADR, HAMID R				
ART UNIT		PAPER NUMBER		
1781				
MAIL DATE		DELIVERY MODE		
07/19/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/586,667

Applicant(s)

ORTIZ-JULIEN, ANNE

Examiner

HAMID R. BADR

Art Unit

1781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-1719-23 and 25-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-1719-23 and 25-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's amendment filed 5/09/2011 is acknowledged.

The rejection of claims 17, 21-22, 25, 27, and 35-36 under 35 U.S.C. 112 second paragraph is withdrawn as amended by Applicants.

Claims 13-17, 19-23 and 25-32 are being considered on the merits.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 31-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claims 31-32 are indefinite for " produces a provision of". The phrase is not clear. The white grapes must naturally contain glutathione, therefore this phrase as recited is unclear.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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2. Claims 13-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrarini (EP 1,236,795; hereinafter R1) in view of Sawano et al. (JP 3-262473; English Abstract; hereinafter R2)
3. R1 discloses an improved vinification process wherein a dose of oenological yeast in active paste form or other forms in a moist state is introduced into the wine. The treatment is provided during the refining of the wines for improvement of its organoleptic and compositional qualities. (Abstract). Given that R1 teaches that various forms of yeast other than paste can be introduced into the wine, it is obvious that various forms of yeast other than paste i.e. active dry yeast or inactive dry yeast can be added to the must.
4. R1 discloses that the yeast in lysis liberates enzymes which contribute to the improved evolution of the wines. R1 teaches that even dead yeast consumes dissociated oxygen and therefore, wines conserved in the presence of yeast are less subject to oxidation phenomena. [0012]
5. R1 discloses that even dead yeast (i.e. inactive yeast) has antioxidant property. It is also known in the art that glutathione is indigenous to wine yeasts and being a potent reducing agent, the antioxidant property of dead yeast as disclosed by R1 implies the action of glutathione in preventing oxidation in wines.
6. R1 adds that the "secondary" actions are performed by yeasts both in the fermentation phase and in the post fermentation phase .[0011 and 0012]. R1 discloses that added yeast cells will cause, inter alia, the absorption of oxygen and consequent reduction of oxidation of wine. [0033]

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7. R1 discloses that the secondary dose of yeast is 0.5-3 g/L which can be added to white wines and red wines. [0037]. The addition of the secondary dose of yeast may take place at any point in the maturation or refinement process of the wine [0034].

8. While R1 discloses the inclusion of oenological yeast for the purpose of improving the organoleptic properties of wines, R1 is silent regarding the glutathione enriched yeast in wine making.

9. R2 discloses yeasts useful for producing wines high in the content of physiologically active components such as glutathione and excellent in quality.

(English Abstract)

10. Therefore, the use of glutathione enriched yeast in wine making was known at the time the invention was made.

11. In summary, the addition of yeast to maturing wines and their role in improving the quality wines is clearly disclosed by R1. R2 teaches of enriching yeasts with glutathione and using such yeasts in wine making.

12. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to add glutathione enriched yeast to the must for primary fermentation or a secondary function as taught by R1 and R2. One would do so to protect white wine from oxidative changes during aging. Absent any evidence to contrary and based on the combined teachings of the cited references, there would be a reasonable expectation of success in adding a glutathione enriched yeast to the must.

Response to Arguments

Applicants' arguments filed after the final rejection are not persuasive.

1. Applicants argue that the claims require the inclusion of glutathione enriched yeast cells for wine making.

a. The new reference R2 discloses the use of glutathione enriched yeast in wine making. Therefore, applicant's arguments are moot.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAMID R. BADR whose telephone number is (571)270-3455. The examiner can normally be reached on M-F, 8:00-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. Lawrence Tarazano/
Supervisory Patent Examiner, Art Unit 1781

HAMID R BADR
Examiner
Art Unit 1781